HAVASU LANDING, INC.

IBLA 73-308 Decided February 11, 1974

Appeal from the decision of the Yuma District Office, Bureau of Land Management, denying concessionaire's application to lease additional public lands for expansion of facilities. Y-0011.

Affirmed.

Secretary of the Interior--Special Use Permits

> The Secretary of the Interior has full power to grant revocable permits for the use of Government land.

Act of August 4, 1939--Secretary of the Interior

> Where it comports with the public interest to do so, the Secretary has discretionary authority to reject a concessionaire's application to lease additional public lands for the expansion of a commercial recreation area, absent any contractual obligation to allow the expansion.

APPEARANCES: Walter B. Chaffee, Esq., Launer, Chaffee, Ward & Orman, Fullerton, California, for the appellant.

OPINION BY MR. STUEBING

Havasu Landing, Inc. is the operator of a commercial recreation center on approximately 130 acres of federal land on the shore of Lake Havasu, San Bernardino County, California, under a 20-year concession contract let in 1959 by the Bureau of Sport Fisheries and Wildlife (BSFW), an agency of the Department of the Interior. 1/

1/ The concession lands were at that time within the Havasu Lake National Wildlife Refuge, under the administration of BSFW. However, in July 1965 the BSFW withdrawal in this area was lifted and the jurisdiction over these lands was transferred to the Bureau of Land Management (BLM).

The contract required the concessionaire to complete certain improvements and install specific facilities over the initial five year period. The contract also contains a provision which alludes to a specifically described tract of adjacent land which was reserved for the expansion of the concession upon the mutual agreement of the parties. However, the expansion to that area was subsequently allowed by the Department, thereby fulfilling any possible contractual obligation. The instant application requests expansion to three additional areas. Appellant contends that when the contract was let there was discussion of the possible need for future expansion of the concession area, and appellant understood from these discussions that BSFW would be disposed to permit such expansion if the need could be demonstrated and if operations were in compliance with the contractual obligations.

Indeed, the record indicates that certain BSFW officials did engage in such discussions, as summarized in the penultimate paragraph of a letter dated October 6, 1966, from the Acting Regional Director, BSFW, as follows:

> "While there was no commitment made that the concession would annex the public campground area, it was agreed that we would be willing to discuss the matter further if and when the present concession development was completed and additional land for expansion became necessary."

By letter dated November 17, 1972, and plat and legal description submitted in February 1973, Havasu Landing, Inc. applied for three parcels of public land comprising a total of about 30 acres, to be leased to it for a term of 50 years pursuant to the Act of August 4, 1939, 53 Stat. 1187. The three parcels would be utilized for further recreational development and expanded sewage treatment facilities.

By his decision of February 23, 1973, the Yuma District Manager rejected the application in its entirety for the following reasons:

1. The Chemehuevi Tribe has claimed certain shoreline lands between Lake Havasu and the Chemehuevi Indian Reservation, including Parcels Nos. 1 and 2, above described. The Tribe has requested that the lands be made available to them under an agreement between the Department of the Interior and the Tribe, pending disposition of their claim. Therefore, the land in Parcels Nos. 1 and 2 is not

available for lease to other applicants. Plans for appropriate use or disposition of these shoreline lands will be made if the agreement with the Chemehuevi Tribe is not consummated. In any event, we will not lease additional shoreline land to help amortize the cost of the proposed sewage treatment facility to serve the existing contract area.

2. San Bernardino County Service Area No. 72 has under consideration a request to construct a sewage treatment facility on lands in Parcel No. 3, described above, to solve the sanitation problems of the entire Havasu Landing community. San Bernardino County is holding in abeyance their request until a determination is made by the Department of the Interior as to the disposition of the lands claimed by the Chemehuevi Indian Tribe. Sanitation facilities to take care of the community are much more preferable than piece-meal development on an individual basis. The construction of the community sewage treatment facilities would make it unnecessary for Havasu Landing, Inc., to lease additional land for private sewage treatment facilities. In the interim, Havasu Landing, Inc., will have to provide the needed sewage treatment facilities on their existing contract area (approximately 130 acres), or on other lands.

It is from this decision that Havasu Landing, Inc. has appealed. In its statement of reasons, appellant cites its reliance in good faith on the alleged understanding reached in the earlier discussions with the BSFW, the widely recognized need for additional camping facilities, and the need for expanded sewage treatment works. It is argued that the denial of the application ignores the needs of the vacationing public and is contrary to the intent and purpose of the concession contract. Appellant concedes that when the contract was negotiated, no legal commitment was made to allow further expansion, but it says that under the circumstances there was every reason to anticipate that it would be favorably considered.

While this appeal was pending, the Acting Secretary of the Interior determined that a special land use permit should be granted to the Chemehuevi Tribe, giving the Tribe the use of the land therein described pending completion of a review of the Tribe's claim.

In a letter to the Chairman of the Chemehuevi Tribal Council dated December 28, 1973, the Acting Secretary stated:

> There is now pending before this Department a claim by the Chemehuevi Tribe to equitable ownership of certain lands riparian to Lake Havasu in California, including lands belonging to the Havasu National Wildlife Refuge. I have given my personal attention to resolution of this claim and, as you know, have met with yourself and other tribal representatives.
>
> This Department is committed to a speedy resolution of this claim. Our objective is to recognize and/or establish the tribe's equitable fee title in lands which it wants to use, while retaining for the United States management and control of all essential parts of the Havasu National Wildlife Refuge. We are now in the process of completing a full review of the alternative approaches toward achieving this goal, which will be finished as promptly as possible.

The Secretary of the Interior has full power to grant revocable permits for the use of Government land. Solicitor's Opinion, M-36743 (March 19, 1968).

The BLM does not dispute the need for additional camping and trailer facilities in the area or the need for larger capacity sewerage treatment works. On the contrary, various Bureau reports and studies have recognized these needs. Nor does the Bureau take the position that the appellant could not or would not fully utilize the lands applied for as indicated. The various studies do indicate, however, that these needs can be met by alternative plans. For example, one report of an engineering study conducted by the Bureau in October 1972 finds that there is adequate space within the present concession for expanding the sewerage treatment operation to meet county health requirements. Another Bureau report, referred to in appellant's statement of reasons, found that additional campsites and trailer spaces are needed in the vicinity, but concluded that these should be provided by creation of a new campground rather than by an extension of the Havasu Landing concession.

The Department's plans and objectives for the utilization of the lands in this area, as enunciated by the Acting Secretary, are the product of comprehensive study and comport with his responsibility for determining the public interest. Under such circumstances

the denial of appellant's application is appropriate, and absent any contractual obligation, well within the scope of the Secretary's discretionary power. See Molybdenum Corporation of America, 12 IBLA 339 (1973); Humble Oil and Refining Co., 4 IBLA 72 (1971); Solicitor's Opinion M-36743, supra.

Incident to its appeal, appellant (acting through its President rather than its lawyer) has requested referral of this case to an Administrative Law Judge for a hearing in order to enable it to present evidence (not described) on certain issues of fact (not specified). We do not perceive that such procedure would contribute to the proper resolution of the case. The motion, therefore, is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

_____
Edward W. Stuebing, Member

We concur:

_____
Douglas E. Henriques, Member

_____
Joan B. Thompson, Member